

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Carlos HERNANDEZ,

Petitioner,

12-CV-08090 (AJN)(SN)

-against-

OPINION AND ORDER

Roland LARKIN,

Respondent.

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SARAH NETBURN, United States Magistrate Judge:

By motion dated March 20, 2013, petitioner Carlos Hernandez moves the Court to grant a request for *pro bono* counsel. For the reasons set forth below, the motion is denied without prejudice.

Appointment of counsel in *habeas corpus* cases is discretionary, and that discretion should be exercised only when the interests of justice so require, unless an evidentiary hearing is necessary. See 18 U.S.C. § 3006A(a)(2)(B). The factors to be considered in ruling on a motion for *pro bono* counsel are well settled and include “the merits of plaintiff’s case, the plaintiff’s ability to pay for private counsel, [plaintiff’s] efforts to obtain a lawyer, the availability of counsel, and the plaintiff’s ability to gather the facts and deal with the issues if unassisted by counsel.” Cooper v. Sargent Co., 877 F.2d 170, 172 (2d Cir. 1989). Of these, “the factor which command[s] the most attention [is] the merits.” Indeed:

[c]ourts do not perform a useful service if they appoint a volunteer lawyer to a case which a private lawyer would not take if it were brought to his or her attention. Nor do courts perform a socially justified function when they request

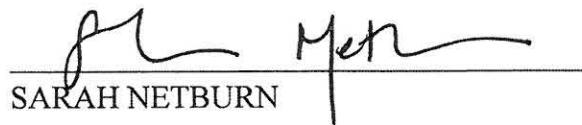
the services of a volunteer lawyer for a meritless case that no lawyer would take were the plaintiff not indigent.

Id.

Here, petitioner's application does describe the efforts he made to obtain counsel in some detail. But without the benefit of the respondent's brief, the Court is unable evaluate the merit of the petition. Accordingly, the Court denies the petition's application without prejudice. The Court will revisit petitioner's request *sua sponte* after respondent has filed his response.

This resolves Docket Number 13.

SO ORDERED.


SARAH NETBURN
United States Magistrate Judge

DATED: New York, New York
March 22, 2013

cc: Carlos Hernandez
05A2006
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